



152632

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
230 SOUTH DEARBORN ST.
CHICAGO, ILLINOIS 60604

JAN 04 1991

Thomas A. Coz
Barrett & McNagny
215 East Berry Street
P.O. Box 2263
Fort Wayne, Indiana 46801-2263

REPLY TO ATTENTION OF:

RE: Great Lakes Asphalt, Zionville, Indiana
Site No. FL

Dear Mr. Coz:

I am in receipt of your letter of December 21, 1990 regarding the Great Lakes Asphalt Site. With regard to your inquiry as to the position of the United States Environmental Protection Agency as to the scope of the de minimis settlement in U.S. v. American Waste Processing, et al. and U.S. v. United Technologies Automotive, Inc., enclosed please find my response to Mr. Frank J. Deveau's letter of December 6th.

In your letter you also raise the issue of various other defenses to liability including section 107(a) and (b)(3) of CERCLA. With regard to the Section 107(b)(3) defense, as you are no doubt aware, a defendant bears the burden of proving each element of this defense. It is U.S. EPA's position that the defendants may not be able to meet this burden and thus would not be entitled to the defense. With regard to the scope of 107(a), U.S. EPA believes that the definition of generator covers the factual scenario of this case.

Therefore, based on the above information, it is the U.S. EPA's position that the de minimis consent decree does not exempt or preclude the settling de minimis parties from liability at the Great Lakes Asphalt Site, and that the applicability of the defense of Section 107(b)(3) is not certain. The position that your client will take is obviously a matter for your mutual decision and analysis. This letter is merely to inform you of U.S. EPA's position as to the claims raised in your letter.

If you have any further questions regarding the Great Lakes Asphalt Site, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Peter M. Felitti".

Peter M. Felitti
Assistant Regional Counsel